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8 Attorneys for Secured Creditor,  
9 WELLS FARGO BANK, N.A.

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 In Re:

Case No. 11-57252 ASW  
(Chapter 13 Proceeding)

13 PAUL J. KELLY and  
14 TAMARA B. KELLY,

15 Debtors.

SECURED CREDITOR, WELLS FARGO  
BANK, N.A.'S OPPOSITION TO AND  
REQUEST FOR HEARING ON  
DEBTORS' MOTION TO VALUE CLAIM  
AND TO AVOID LIEN

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18 Secured Creditor, WELLS FARGO BANK, N.A. (hereinafter referred to as "Secured  
19 Creditor") opposes and requests a hearing set on Debtors, PAUL J. KELLY and TAMARA B.  
20 KELLY's (hereinafter referred to as "Debtors") Motion to Value Claim and to Avoid Lien on  
21 the following grounds:

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23 1. On September 7, 2006 Debtors (as Borrowers) entered into a written Fixed  
24 Rate Note (hereinafter referred to as "the Agreement") with Secured Creditor (as Lender).  
25 Pursuant to the terms and conditions of the parties' contractual agreement, Debtors agreed to  
26 pay Secured Creditor the sum of \$148,000.00 due and payable in fifty nine (59) monthly  
27 installment payments of \$1,137.11, commencing on October 22, 2006 and ending with a  
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1 balloon payment on September 22, 2011. A true and correct photocopy of the Agreement is  
2 filed separately herewith and is incorporated herein by reference. The Agreement was  
3 secured by a Deed Of Trust (Second Deed of Trust) on the real property more commonly  
4 know as 21126 Locust Drive in Los Gatos, California (hereinafter referred to as "The  
5 Property"). Further proof of Secured Creditor's security interest in The Property is  
6 contained on the Deed Of Trust, a true and correct photocopy of which is filed separately  
7 herewith and is incorporated herein by reference.  
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9         2.         Secured Creditor objects to the \$450,000.00 valuation allocated to the Property  
10 in that Secured Creditor's own investigation into the value of the Property has caused it to  
11 conclude that the value of the Property at the time the Debtor filed the bankruptcy petition was  
12 \$645,000.00. More specifically on August 3, 2011, Secured Creditor ordered a Broker's Price  
13 Opinion on the Property. In the Broker's Price Opinion, Secured Creditor was informed that the  
14 Property had a value of \$645,000.00. A true and correct photocopy of the Broker's Price  
15 Opinion is filed separately herewith and is incorporated herein by reference. Secured Creditor  
16 routinely uses the services of Goodman Dean for purposes of obtaining accurate real estate  
17 valuations. Secured Creditor's has found the real estate valuations provided by Goodman Dean  
18 to reasonable, reliable and accurate.  
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21         3.         Secured Creditor further opposes Debtors' Motion in that the Debtors are  
22 attempting to treat Secured Creditor as an unsecured claim, **which it is not!** Pursuant to  
23 Debtors' Motion, Debtor states the balance on the First Deed of Trust with Wells Fargo  
24 Home Mortgage is \$592,000.00. Accordingly, in view of the Broker's Price Opinion of  
25 \$645,000.00 and filed concurrently herewith, there is enough equity in the property for  
26 Secured Creditor to be secured.  
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1           4.       Secured Creditor further opposes Debtors' Motion in that Debtors are  
2 attempting to immediately strip Secured Creditor's lien and avoid paying Secured Creditor  
3 on their loan account with Secured Creditor. Assuming arguendo that credible evidence  
4 were presented to the Court establishing that due to the decline in real estate values in the  
5 area that the subject real property had in fact dropped to value below the amount of the First  
6 Deed of Trust, Debtor is not permitted at this stage of the Chapter 13 plan to strip the lien  
7 held by Secured Creditor. Rather, Secured Creditor's deed of trust must remain of record  
8 until the plan is completed. This is required by 11 U.S.C. §1325(a)(5)(B)(I).  
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10           5.       Secured Creditor believes that if it is forced to accept Debtors' Motion as is  
11 presently proposed, Secured Creditor will be prejudiced by its position thereunder and  
12 Secured Creditor will continue to suffer substantial, mounting losses.  
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6. Therefore, for the reasons more fully set forth above, Secured Creditor requests that a hearing be held on Debtors' Motion and it shall be the responsibility of Debtors to schedule such a hearing with the above-entitled Court and duly notice Secured Creditor and its attorneys of record herein of the date, time, and location of such hearing.

Secured Creditor and its attorneys of record herein shall be duly noticed as hereinafter set forth below:

**WELLS FARGO BANK, N.A.**

Home Equity Group

X2303-01A

## 1 Home Campus

Des Moines, IA 50328-0001

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Dated: August 31, 2011

LAW OFFICES OF  
AUSTIN P. NAGEL

By /s/ Austin P. Nagel  
Attorney for Secured Creditor,  
WELLS FARGO BANK, N.A.

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